

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the Federal Register (40 FR 27823-27824) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the Federal Register (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned Federal Register publication.

Pediocactus sileri was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on the June 16, 1976 proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 11, 1979, in Phoenix, Arizona for five Arizona cacti proposed as Endangered, including *Pediocactus sileri*.

In the June 24, 1977, Federal Register the Service published a final rulemaking (42 FR 32373-32381, codified at 50 CFR) detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this rule does not meet the criteria for significance in the Department regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program, or the concept of Endangered and Threatened plants

50 CFR Part 17

Determination That *Pediocactus sileri* is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Pediocactus sileri* (Siler pincushion cactus), a native plant of Arizona and Utah, to be an Endangered species. Habitat destruction through mining, off-road vehicle use, and a power project threatens the plants in various parts of its range. Removal of the plants by private collectors and commercial suppliers has resulted in depletion of natural populations. Grazing is also negatively impacting this cactus. This action will extend to this plant the protection provided by the Endangered Species Act of 1973, as amended in 1978.

DATE: This rulemaking becomes effective on November 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Chief, Office of

Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202/235-2771).

SUPPLEMENTARY INFORMATION:

Background

Pediocactus sileri (Siler pincushion cactus) occurs along the Arizona-Utah border in three adjacent counties (two in Arizona and one in Utah). This cactus is restricted to a specific soil type and has a very restricted range in desert shrub communities. There are probably fewer than 1,000 individuals of the species remaining. *Pediocactus sileri* is a small, solitary, globose cactus, about four inches tall and three to four inches in diameter. This species has maroon and yellow flowers and greenish-yellow fruits. The continued existence of this cactus is in danger, and this rule will extend to it the protection provided by the Endangered Species Act of 1973 as amended. The following paragraphs summarize the actions leading up to this final rule and the factors which cause this species to be Endangered.

and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments had addressed the general problems of cacti conservation. Additionally many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Section 9(a)(2) and 10(a) of the Act. These comments are summarized in the June 24, 1977, **Federal Register** final prohibitions and permit provisions. No comments dealing specifically with *Pediocactus sileri* were received during these official comment periods. The Governors of Arizona and Utah were also notified of the proposed action, but neither submitted any comments dealing specifically with *Pediocactus sileri*.

On July 11, 1979, the Service held a second public hearing in Phoenix, Arizona, and again solicited comments on five Arizona cacti. During this period the Bureau of Reclamation voiced concern that there was a lack of data to support the listing of these five cacti and a lack of detailed information on their Critical Habitat. However extensive data supporting the listing of these taxa are available from either the Service's regional office in Albuquerque, N. Mex.; or the Washington, D.C. Office of Endangered Species. It has been determined that designating Critical Habitat would be imprudent due to probability of increasing collection. Conservationists, botanists, the Bureau of Land Management, and the Arizona Commission of Agriculture and Horticulture all indicated their concurrence with and/or their strong support for the proposal to determine *Pediocactus sileri* to be an Endangered species.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Pediocactus sileri* (Engelm. ex Coult.) L. Benson (Siler pincushion cactus; synonyms: *Echinocactus sileri* Engelm. ex Coult., *Utahia sileri* (Engelm. ex Coult.) Britt. and Rose) is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Pediocactus sileri* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* A major threat to

the habitat of *Pediocactus sileri* is strip mining of gypsum deposits. Commercially valuable deposits occur at or near the surface of much of the potential habitat of the species. Some loss of habitat has already occurred from mining activities. Off-road vehicle use is a serious threat to the plants, and the rounded, largely unvegetative knobs where the species grows are an especially attractive area for this activity. Botanists note that aside from collectors, the rare plants of the Arizona strip are more severely impacted by off-road vehicle use than by any other single factor. This species occurs on lands administered by the Bureau of Land Management and the Kaibab Indian Reservation which is a Federal reservation, as well as on private lands.

The Utah populations are threatened by certain construction planned as a part of the Warner Valley Power project. As presently planned construction of a road associated with this generating plant to be built near St. George, Utah, could eliminate individuals of this cactus.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* As with other species in the genus, this species is in worldwide demand by collectors of rare cacti. Botanists have noted that the removal of plants from the wild has occurred and has resulted in the depletion of natural populations. A botanist who was contracted by the Service to carry out a status survey for this species also noted some commercial trade in this species. Overcollection is an ongoing threat to this species.

3. *Disease or predation* (including grazing). Cattle grazing, adversely affects this species by trampling, especially young plants during wet seasons of the year when the ground is muddy. Grazing is a definite threat since most of this species' range is heavily grazed.

4. *The inadequacy of existing regulatory mechanisms.* This species is offered protection under Arizona law, A.R.S. Chapter 7, Section 3-901, prohibiting collection of all members of the genus *Pediocactus*, except for scientific or educational purposes under permit from the State Commission of Agriculture and Horticulture. Utah has no State laws protecting Endangered and Threatened plants as yet.

This cactus occurs on lands administered by the Bureau of Land Management, on the Kaibab Indian Reservation and on private lands. The taking or vandalizing of plants is not prohibited by the Endangered Species Act. However, where Federal lands are involved, other restrictive provisions are

available. Bureau of Land Management regulations prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically allowed or authorized (43 CFR 6010.2). The Kaibab Indian Reservation is a Federal reservation and through tribal resolutions may restrict the taking of plants from their lands, as well.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention regulates export of the taxon but does not regulate internal trade in the cactus or habitat destruction. Except as noted in the preceding paragraph no other Federal protective laws currently apply to this species. The Endangered Species Act will now offer additional protection for the taxon.

5. *Other natural or manmade factors affecting its continued existence.* Restriction to a specialized and localized soil type, with a low total population level consisting of small, scattered and disjunct populations with a resultant restricted gene pool, are factors which tend to intensify the adverse effects of threats to the plants or their habitat.

Effect of the Rulemaking

Section 7(a) of the Act as amended in 1978 provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with, and with the assistance of, the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with, and with the assistance of, the Secretary, ensure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870-876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rulemaking requires Federal agencies to

satisfy these statutory and regulatory obligations with respect to this species.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species, are found at §§ 17.61-17.63 (42 FR 32378-32381).

Section 9(a)(2) of the Act, as implemented by § 17.61 would apply. With respect to any species or plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the Federal Register of June 24, 1977 (42 FR 32373-32381, 50 CFR Part 17), also provide for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora which requires a permit for export of the taxon. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

An Environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical habitat.

Pediocactus sileri is threatened by taking [See discussion under factors 2 and 4 in the Conclusion section of this rule], and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical

Habitat maps would make this species more vulnerable and there it would not be prudent to determine Critical Habitat. Federal agencies and other parties will be notified of the locations of these plants for protection purposes.

The Service now proceeds with the final rulemaking to determine this species to the Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531-1543).

The primary author of this rule is Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975). Status information for this species was compiled by Dr. A.M. Phillips, III, Dr. B. G. Phillips, Mr. L. T. Green, Ms. J. Mazzoni, and Ms. Elaine Peterson (Museum of Northern Arizona, Flagstaff, Arizona).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus Family:						
<i>Pediocactus sileri</i>	Siler pincushion cactus	U.S.A. (AZ and UT) ..	Entire	E	NA

Dated: October 19, 1979.

Robert S. Cook,
Deputy Director, Fish and Wildlife Service.

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